



September 30, 1999

Mr. Roy Murphy, III  
Roy Murphy & Associates  
8203 Willow Place South, Suite 300  
Houston, Texas 77070-5625

OR99-2761

Dear Mr. Murphy:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 128912.

The Lake Forest Utility District (the "district"), which you represent, received a request for information concerning: 1) a 1996 lawsuit the district filed against Lakewood Forest Center and other defendants, the settlement of that suit, and the use of the settlement proceeds; 2) testing conducted since January 1, 1996, by or on behalf of the district to detect the presence of certain toxic chemicals in the sewer system; 3) communications between the district and any dry cleaners within the district; and 4) any repairs made since January 1, 1996, as a result of the discharge into the sewer system of toxic chemicals used by dry cleaners. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. You have submitted to this office a representative sample of the documents at issue.<sup>1</sup>

Initially, we note that the submitted documents include pleadings that have been filed with a court and the minutes of public meetings. For compelling reasons of public policy, these types of documents cannot be withheld from disclosure even if they arguably fall within the scope of one of the exceptions to disclosure found in the Public Information Act. *See Star*

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

*Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (documents filed with a court are generally considered public); Open Records Decision No. 551 at 2-3 (1990). Furthermore, the Public Information Act's exceptions do not, as a general rule, apply to information made public by other statutes. Open Records Decision No. 525 (1989). The minutes of a public meeting are made public by statute and thus cannot be withheld from disclosure pursuant to section 552.103 of the Government Code. Gov't Code § 551.022; Open Records Decision No. 221 (1979). We will consider your arguments against disclosure for the remaining documents at issue.

Section 552.103(a) of the Government Code excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted under 552.103(a).

To establish that litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 at 4 (1986). Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party.<sup>2</sup> Open Records Decision No. 555 (1990); see Open Records Decision No. 518 at 5 (1989) (litigation must be "realistically contemplated"). On the other hand, this office has determined that if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. See Open Records Decision No. 331 (1982). Further, the fact that a potential opposing party has hired an attorney who makes a request for information does not establish that litigation is reasonably anticipated. Open Records Decision No. 361 (1983).

You contend that the circumstances giving rise to the request for information, coupled with the fact that the requestor's client refuses to stipulate that the district will not be added as a


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<sup>2</sup>In addition, this office has concluded that litigation was reasonably anticipated when the potential opposing party took the following objective steps toward litigation: filed a complaint with the Equal Employment Opportunity Commission, see Open Records Decision No. 336 (1982); hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, see Open Records Decision No. 346 (1982); and, threatened to sue on several occasions and hired an attorney, see Open Records Decision No. 288 (1981).

defendant to the client's pending lawsuit against Lakewood Forest Center, establishes that the district reasonably anticipates litigation. Having carefully considered your arguments, we conclude that you have not presented concrete evidence to support your claim that the district reasonably anticipates litigation. The requested information is, therefore, not excepted from disclosure under section 552.103. The district must make the information available to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

  
Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref: ID# 128912

Encl. Submitted documents

cc: Ms. Majorie Nicol  
Mayer, Brown & Platt  
700 Louisiana Street, Suite 3600  
Houston, Texas 77002-2730  
(w/o enclosures)